

[Counsel listed on signature page]

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION**

IN RE COLLEGE ATHLETE NIL  
LITIGATION

**Case No. 4:20-cv-03919-CW**

**SECOND STIPULATION AND [PROPOSED]  
ORDER SUPPLEMENTING AND AMENDING  
PROTECTIVE ORDER REGARDING  
HIGHLY CONFIDENTIAL – COUNSEL  
ONLY AND CONFERENCE STRICTLY  
CONFIDENTIAL INFORMATION**

Hon. Claudia Wilken

1           On December 22, 2020, this Court entered a Stipulation and Protective Order (the “Protective  
 2 Order”) in this action (Docket No. 137). Exhibit A to the Protective Order provides for the  
 3 confidentiality designation of “Highly Confidential – Counsel Only.” Highly Confidential – Counsel  
 4 Only Information<sup>1</sup> is defined as:

5           any document, response to discovery, or deposition transcript which that  
 6 Disclosing Party considers in good faith to contain Confidential Information,  
 7 the disclosure of which to another party or non-party would create a substantial  
 8 risk of serious harm that could not be avoided by less restrictive means (Highly  
 9 Confidential – Counsel Only Information).

10           Ex. A to Protective Order (Docket No. 136-1).

11           The Protective Order further contemplated that the parties would separately negotiate  
 12 appropriate protections for documents to be produced in this action that could be designated  
 13 Conference Strictly Confidential – Outside Litigation Counsel Only or Network Strictly Confidential  
 14 – Outside Litigation Counsel Only under the Protective Order. On February 8, 2021, the Court entered  
 15 a Supplemental Stipulation and Order Supplementing and Amending Protective Order Regarding  
 16 Conference and Network Strictly Confidential Documents (the “First Supplemental Stipulation &  
 17 Order”) (Docket No. 148).

18           The First Supplemental Stipulation & Order defines House Conference Strictly  
 19 Confidential – Outside Litigation Counsel Only Information as:

20           3. Any party or non-party may designate as House CSC – Outside Litigation  
 21 Counsel Only (by stamping the relevant page or portion “House CSC – Outside  
 22 Litigation Counsel Only”) any document, response to discovery, deposition  
 23 transcript, or anything else furnished during the course of these actions that  
 24 includes or concerns financial information, contractual terms, or other sensitive  
 25 business information of a Conference Defendant in these actions (including  
 26 summaries or analyses of such information that may identify the nature of such  
 27 terms), that the Disclosing Party or their contractual counterparty considers in  
 28 good faith to contain information, the disclosure of which to in-house counsel  
 or specific individual outside counsel of another party or non-party would create  
 a substantial risk of serious competitive, business, or financial harm to such  
 designating party or to a party or non-party to which such designating party has  
 a confidentiality obligation (“House CSC – Outside Litigation Counsel Only  
 Information”).

1 This Second Supplemental Stipulation and [Proposed] Order reflects the parties' agreement to further  
2 amend the Protective Order and the First Supplemental Stipulation & Order regarding Highly  
3 Confidential – Counsel Only Information and House Conference Strictly Confidential – Outside  
4 Litigation Counsel Only Information.

5 THEREFORE, through counsel, the parties stipulate and move the Court to order that:

6 1. Highly Confidential – Counsel Only Information includes all information produced by  
7 an NCAA member school, college, university, or institution that is protected by the Family  
8 Educational Rights and Privacy Act (“FERPA”), 20 U.S.C. § 1232g (hereinafter “FERPA-Related  
9 Information”). Any member school, college, university, or institution may designate documents that  
10 contain FERPA-Related Information as “Highly Confidential – Counsel Only” in accordance with the  
11 provisions of the Protective Order.

12 2. Materials or information designated as FERPA-Related Information shall not be  
13 disclosed, except in accordance with the terms of the Protective Order governing the disclosure of  
14 Highly Confidential – Counsel Only Information and shall be redacted from public documents and  
15 filings, unless otherwise required by court order.

16 3. In the event any individual member school, college, university, or institution is named  
17 as a defendant in this action, any such information produced by a member school, college, university,  
18 or institution in response to a third party subpoena shall be treated as “House CSC – Outside Litigation  
19 Counsel Only” as to the named individual member school, college, university, or institution only.

20 IT IS SO STIPULATED.

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27 <sup>1</sup> Capitalized terms used herein shall have the same definition and meaning as set forth in the  
28 Protective Order and Supplemental Stipulation and Order Supplementing and Amending Protective  
Order Regarding Conference and Network Strictly Confidential Documents.

1 Dated: March 28, 2022

Respectfully submitted,

2 HAGENS BERMAN SOBOL SHAPIRO LLP

WINSTON & STRAWN LLP

3 By: /s/ Steve W. Berman

4 Steve W. Berman (*pro hac vice*)  
Emilee N. Sisco (*pro hac vice*)  
5 1301 Second Avenue, Suite 2000  
Seattle, WA 98101  
Telephone: (206) 623-7292  
7 Facsimile: (206) 623-0594  
steve@hbsslaw.com  
8 emilees@hbsslaw.com

By: /s/ Jeffrey L. Kessler

Jeffrey L. Kessler (*pro hac vice*)  
David G. Feher (*pro hac vice*)  
David L. Greenspan (*pro hac vice*)  
Adam I. Dale (*pro hac vice*)  
200 Park Avenue  
New York, NY 10166-4193  
Telephone: (212) 294-4698  
Facsimile: (212) 294-4700  
jkessler@winston.com  
dfeher@winston.com  
dgrenspan@winston.com  
aidale@winston.com

9 Benjamin J. Siegel (SBN 256260)  
10 715 Hearst Avenue, Suite 202  
Berkeley, CA 94710  
11 Telephone: (510) 725-3000  
Facsimile: (510) 725-3001  
12 bens@hbsslaw.com

Jeanifer E. Parsigian (SBN 289001)  
101 California Street, 34<sup>th</sup> Floor  
San Francisco, CA 94111  
Telephone: (415) 591-1000  
Facsimile: (415) 591-1400  
jparsigian@winston.com

13 Jeffrey L. Kodroff  
14 SPECTOR ROSEMAN & KODROFF PC  
Two Commerce Square  
15 2001 Market Street, Suite 3420  
Philadelphia, PA 19103  
16 Telephone: (215) 496 0300  
Facsimile: (215) 496 6611  
17 jkodroff@srkattorneys.com

*Counsel for Plaintiffs and the Proposed Classes*

18 *Counsel for Plaintiffs and the Proposed Classes*

1 WILKINSON STEKLOFF LLP

2 By: /s/ Beth A. Wilkinson  
3 Beth A. Wilkinson (*pro hac vice*)  
4 Rakesh N. Kilaru (*pro hac vice*)  
5 Kieran Gostin (*pro hac vice*)  
6 Calanthe Cope-Kasten (*pro hac vice*)  
7 2001 M Street NW, 10th Floor  
8 Washington, DC 20036  
Telephone: (202) 847-4000  
Facsimile: (202) 847-4005  
bwilkinson@wilkinsonstekloff.com  
rkilaru@wilkinsonstekloff.com  
kgostin@wilkinsonstekloff.com  
ccope-kasten@wilkinsonstekloff.com  
9 Rahul Hari (SBN 313528)  
10 11601 Wilshire Blvd., Suite 600  
Los Angeles, CA 90025  
Telephone: (424) 291-9655  
Facsimile: (202) 847-4005  
rhari@wilkinsonstekloff.com

11  
12  
13 *Counsel for Defendant National Collegiate  
Athletic Association*

14 MAYER BROWN LLP

15 By: /s/ Britt M. Miller  
16 Britt M. Miller (*pro hac vice*)  
Matthew D. Provance (*pro hac vice*)  
71 South Wacker Drive  
Chicago, IL 60606  
Telephone: (312) 782-0600  
Facsimile: (312) 701-7711  
bmiller@mayerbrown.com  
mprovance@mayerbrown.com

20 Christopher J. Kelly (SBN 276312)  
Two Palo Alto Square, Suite 300  
3000 El Camino Real  
Palo Alto, CA 94306  
Telephone: (650) 331-2000  
Facsimile: (650) 331-2060  
cjkelly@mayerbrown.com

25  
26 *Counsel for Defendant The Big Ten  
Conference, Inc.*

27 FOX ROTHSCHILD LLP

28 By: /s/ D. Erik Albright  
D. Erik Albright (*pro hac vice*)  
Gregory G. Holland (*pro hac vice*)  
230 North Elm Street, Suite 1200  
Greensboro, NC 27401  
Telephone: (336) 378-5368  
Facsimile: (336) 378-5400  
ealbright@foxrothschild.com  
gholland@foxrothschild.com

Jonathan P. Heyl (*pro hac vice*)  
101 N. Tryon Street, Suite 1300  
Charlotte, NC 28246  
Telephone: (704) 384-2625  
Facsimile: (704) 384-2800  
jheyel@foxrothschild.com

Alexander Hernaez (SBN 201441)  
345 California Street, Suite 2200  
San Francisco, CA 94104-2670  
Telephone: (415) 364-5540  
Facsimile: (415) 391-4436  
ahernaez@foxrothschild.com

*Counsel for Defendant The Atlantic Coast  
Conference*

PROSKAUER ROSE LLP

By: /s/ Scott P. Cooper  
Scott P. Cooper (SBN 96905)  
Bart H. Williams (SBN 134009)  
Kyle A. Casazza (SBN 254061)  
Shawn S. Ledingham, Jr. (SBN 275268)  
Kelly M. Curtis (SBN 313581)  
2029 Century Park East, Suite 2400  
Los Angeles, CA 90067  
Telephone: (310) 557-2900  
Facsimile: (310) 557-2193  
scooper@proskauer.com  
bwilliams@proskauer.com  
kcasazza@proskauer.com  
sleddingham@proskauer.com  
kcurtis@proskauer.com

*Counsel for Defendant Pac-12 Conference*

1 POLSINELLI PC

2 By: /s/ Leane K. Capps  
3 Leane K. Capps (*pro hac vice*)  
4 Caitlin J. Morgan (*pro hac vice*)  
2950 N. Harwood Street  
Suite 2100  
Dallas, TX 75201  
Telephone: (214) 397-0030  
lcapps@polsinelli.com  
cmorgan@polsinelli.com  
Amy D. Fitts (*pro hac vice*)  
120 W. 12th Street  
Kansas City, MO 64105  
Telephone: (816) 218-1255  
afitts@polsinelli.com

10 Wesley D. Hurst (SBN 127564)  
2049 Century Park East, Suite 2300  
11 Los Angeles, CA 90067  
12 Telephone: (310) 556-1801  
whurst@polsinelli.com

13 *Counsel for Defendant The Big Twelve  
Conference, Inc.*

ROBINSON, BRADSHAW & HINSON, P.A.

2 By: /s/ Robert W. Fuller  
Robert W. Fuller, III (*pro hac vice*)  
Lawrence C. Moore, III (*pro hac vice*)  
Pearlynn G. Houck (*pro hac vice*)  
Amanda P. Nitto (*pro hac vice*)  
101 N. Tryon St., Suite 1900  
Charlotte, NC 28246  
Telephone: (704) 377-2536  
Facsimile: (704) 378-4000  
rfuller@robinsonbradshaw.com  
lmoore@robinsonbradshaw.com  
phouck@robinsonbradshaw.com  
anitto@robinsonbradshaw.com

3 Mark J. Seifert (SBN 217054)  
SEIFERT ZUROMSKI LLP  
One Market Street, 36th Floor  
San Francisco, California 94105  
Tel. (415) 999-0901  
Fax (415) 901-1123  
mseifert@SZLLP.com

4 *Counsel for Defendant Southeastern  
Conference*

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**ATTESTATION PURSUANT TO CIVIL LOCAL RULE 5-1(i)(3)**

Pursuant to Civil Local Rule 5-1(i)(3), the filer of this document attests that concurrence in the filing of this document has been obtained from the signatories above.

/s/ Jeffrey L. Kessler  
JEFFREY L. KESSLER

1                           **[PROPOSED] ORDER**  
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PURSUANT TO STIPULATION, IT IS SO ORDERED,

DATED: March \_\_, 2022

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6                           The Hon. Claudia Wilken  
7                           UNITED STATES DISTRICT JUDGE  
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